

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 406

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR LIMITATIONS
ON AND REGULATION OF TITLE LOANS; PROHIBITING LENDERS FROM
MAKING TITLE LOANS UNDER A LICENSE ISSUED PURSUANT TO THE NEW
MEXICO SMALL LOAN ACT OF 1955; ENACTING THE TITLE LOAN ACT;
CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 15 of this act may be cited as the "Title Loan Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Title Loan Act:

A. "consumer" means a person who enters into a
title loan product agreement and receives the loan proceeds in
New Mexico;

B. "division" means the financial institutions

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1 division of the regulation and licensing department;

2 C. "director" means the director of the division;

3 D. "extended title loan" means a title loan in
4 which a consumer refinances the remaining balance of an
5 existing title loan with the same licensee. An extended title
6 loan is not a new title loan and shall have the same interest
7 term as the original title loan being extended;

8 E. "fair market value" means the value of the motor
9 vehicle as determined by a nationally recognized general index
10 of motor vehicle values approved by the division;

11 F. "installment loan" means a loan that is to be
12 repaid in a minimum of twelve successive substantially equal
13 payment amounts to pay off a loan in its entirety with a period
14 of at least one year to maturity;

15 G. "license" means a permit issued under the
16 authority of the Title Loan Act to make title loan products
17 strictly in accordance with the provisions of that act at a
18 single place of business. It shall constitute and shall be
19 construed as a grant of a revocable privilege only to be held
20 and enjoyed subject to all the conditions, restrictions and
21 limitations contained in the Title Loan Act and rules
22 promulgated by the director;

23 H. "licensee" means a person to whom one or more
24 licenses have been issued pursuant to the Title Loan Act upon
25 the person's written application electing to become a licensee

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1 and consenting to exercise the privilege of a licensee solely
2 in conformity with the Title Loan Act and the rules promulgated
3 by the director under that act and whose name appears on the
4 face of the license;

5 I. "motor vehicle" means a vehicle that is self-
6 propelled or is propelled by electric power obtained from
7 batteries;

8 J. "payment plan" means a loan to pay the
9 outstanding balance of a title loan;

10 K. "person" includes an individual, copartner,
11 association, trust, corporation and any other legal entity;

12 L. "title lender" means a person engaged in the
13 business of entering into title loan product agreements with
14 consumers;

15 M. "title loan" means a loan transaction secured by
16 a motor vehicle, but does not include credit extended to
17 finance the purchase of a motor vehicle or an installment loan;

18 N. "title loan product" means a title loan or
19 payment plan; and

20 O. "title loan product agreement" means a written
21 agreement between a consumer and a title lender evidencing a
22 title loan product.

23 Section 3. [NEW MATERIAL] LICENSURE OF TITLE LENDERS.--

24 A. It is unlawful for any person to act as a title
25 lender unless the person has been licensed by the division

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1 pursuant to the Title Loan Act to make title loan products.

2 B. All title loan product agreements entered into
3 by a title lender that are in violation of the title lender's
4 license requirements are void, and the title lender has no
5 right to collect, receive or retain any interest, fees or
6 charges.

7 C. A consumer who enters into a title loan product
8 agreement with a title lender who is in material violation of
9 the title lender's obligations under Sections 6 through 11 of
10 the Title Loan Act shall not be bound by the terms of the
11 agreement, except that the consumer's only liability is for the
12 return of the principal sum borrowed, which shall be repaid
13 within a reasonable time after a finding is made that the title
14 loan product is void and after the title lender releases any
15 lien on the motor vehicle and returns the certificate of title.

16 D. Each license shall specify the location in New
17 Mexico of the specific title lender's office to which it
18 applies and must be conspicuously displayed in that office.

19 E. Before a title lender's office location may be
20 changed or moved by a title lender, the division shall approve
21 the change of location by mailing the title lender an updated
22 license for that office.

23 F. Each title lender shall post a surety bond in
24 the amount of fifty thousand dollars (\$50,000) for each office
25 location, not to exceed a maximum of two hundred fifty thousand

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1 dollars (\$250,000) per title lender. A title lender shall
2 notify the division in writing of any claim made on the title
3 lender's bond. When an action is commenced on a title lender's
4 bond, the director may require the title lender to file a new
5 bond. A surety bond shall be available to pay damages and
6 penalties to consumers harmed by a violation of the Title Loan
7 Act.

8 G. More than one place of business shall not be
9 maintained under the same license, but the division may issue
10 more than one license to the same title lender if the title
11 lender is otherwise qualified.

12 H. Each title lender shall keep books, accounts and
13 records that will enable the division to determine if the title
14 lender is complying with the provisions of the Title Loan Act
15 and shall maintain any other records required by the division.
16 The division may examine the records at any reasonable time.
17 The records shall be kept for seven years following the last
18 entry on a title loan product and shall be kept according to
19 generally accepted accounting procedures that include an
20 examiner being able to review the record keeping and reconcile
21 each title loan product with documentation maintained in the
22 consumer's title loan product file records.

23 Section 4. [NEW MATERIAL] EXEMPTIONS.--A banking
24 corporation, savings and loan association or credit union
25 operating under the laws of the United States or of a state

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1 shall be exempt from the requirements of the Title Loan Act.

2 Section 5. [NEW MATERIAL] APPLICATION--BOND--
3 INVESTIGATION AND FEE--AGENT FOR SERVICE OF PROCESS--ISSUANCE
4 OR DENIAL OF LICENSE--RENEWAL.--

5 A. Application for a license and any annual license
6 renewal shall be in writing under oath and in the form
7 prescribed by the director, shall give the exact location where
8 the business is to be conducted and shall contain such other
9 relevant information as the director may require, including
10 identification of all parties in interest and the names and
11 addresses of all the partners, officers, directors, trustees
12 and beneficiaries of any trust and of such principal owners and
13 members as will provide the basis for an investigation and
14 findings necessary under the Title Loan Act. The application
15 shall also include a statement accepting the license, if
16 granted, as a privilege to be enjoyed and exercised only under
17 all the terms and conditions of the Title Loan Act and under
18 all rules of the director promulgated pursuant to that act.
19 The applicant shall pay an application fee of one thousand
20 dollars (\$1,000) to the director at the time of making
21 application for an original license.

22 B. The application shall be accompanied by, and
23 every licensee shall at all times maintain on file with the
24 director, a written power of attorney appointing a person who
25 is a resident of this state as the licensee's agent for service

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1 of all judicial or other process or legal notice and notices
2 provided for by the Title Loan Act, unless the licensee has
3 appointed an agent for service of process under another statute
4 of this state. In case of noncompliance with this subsection,
5 service of process, including service of all notices provided
6 for in the Title Loan Act, may be made on the manager or person
7 in charge of the registered office or place of business of the
8 licensee, and the director may by order suspend the license
9 pending compliance with this section.

10 C. Upon the filing of an application, whether it is
11 an original or a renewal, the director shall investigate the
12 facts concerning the application and the requirements provided
13 in this section.

14 D. An applicant for a license, upon written notice
15 to do so by the director, shall, within twenty days after
16 service of the notice, furnish in writing, under oath, to the
17 director all additional information required by the director
18 that may be relevant or, in the opinion of the director,
19 helpful in conducting the investigation.

20 E. Failure to comply with the director's
21 requirement for supplemental information or the willful
22 furnishing of false information is sufficient grounds for
23 denial of license.

24 F. False or misleading information willfully and
25 intentionally furnished to the director prior to the issuance

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1 of any license is grounds for suspension or revocation of any
2 license in accordance with the procedures for suspension or
3 revocation of license in the Title Loan Act.

4 G. The director shall grant or deny each complete
5 application for an original license within sixty days of
6 receipt of the application, fees and all the required
7 information, unless the period is extended by written agreement
8 between the applicant and the director.

9 H. The director shall enter an order granting the
10 application, file the director's findings and, upon payment of
11 the license fee pursuant to the fee schedule set by the
12 director, issue and deliver a license to the applicant if the
13 director finds that:

14 (1) the financial responsibility, character
15 and general fitness of the applicant for an original license
16 and of the individual members and beneficiaries of the
17 applicant, if the applicant is a copartnership, association or
18 trust, and of the officers and directors of the applicant, if
19 the applicant is a corporation, are such as to command the
20 confidence of the public and to warrant belief that the
21 business will be operated lawfully, honestly, fairly and
22 efficiently within the declared purposes and spirit of the
23 Title Loan Act; and

24 (2) the applicant has the surety bond required
25 in Section 3 of the Title Loan Act.

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1 I. If the director does not make the findings
2 enumerated in Subsection H of this section, the director shall
3 enter an order denying the application, notify the applicant of
4 the denial and retain the application fee. Within thirty days
5 after the entry of such an order, the director shall prepare
6 written findings and shall deliver a copy to the applicant.

7 J. A written application for license renewal shall
8 be filed on or before March 31 of each year, and thereupon the
9 director shall investigate the facts and review the files of
10 examinations of the applicant made by the director's office and
11 of complaints filed by borrowers, if any. The director shall
12 deliver a renewal license to the applicant if the director
13 finds that:

14 (1) no valid complaints of violations or
15 abuses of the Title Loan Act or of the rules of the director
16 promulgated under that act have been filed;

17 (2) examinations of the affairs of the
18 applicant indicate that the business has been conducted and
19 operated lawfully and efficiently within the declared purposes
20 and spirit of the Title Loan Act; and

21 (3) the financial responsibility, experience
22 and general fitness and character of the applicant remain such
23 as to command the confidence of the public and to warrant the
24 belief that the business will continue to be operated lawfully
25 and efficiently within the purposes and spirit of the Title

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1 Loan Act.

2 K. If the director does not make the findings
3 enumerated in Subsection J of this section, the director may
4 grant a temporary extension of the license not exceeding sixty
5 days pending a hearing. The director shall enter an order
6 fixing a date for a hearing on the application; shall notify
7 the licensee of the hearing, specifying the particular
8 complaints, violations or abuses or other reasons for the
9 director's contemplated refusal to renew the license; and shall
10 afford to the applicant an opportunity to be heard. At the
11 hearing, the director shall produce evidence to establish the
12 truth of the charges of violation or other grounds specified in
13 the notice, and the applicant shall be accorded the right to
14 produce evidence or other matters of defense. If after the
15 hearing the director finds that the complaints of violations or
16 other grounds specified in the notice are not well-founded, the
17 director shall issue the renewal license. If the director
18 finds that the complaints of violations or other grounds are
19 well-founded, the director shall enter an order denying the
20 renewal application and notify the applicant of the denial,
21 returning the renewal license fee tendered with the
22 application. Within thirty days after the entry of such an
23 order, the director shall prepare written findings and shall
24 deliver a copy of the findings to the applicant. The order
25 shall be subject to review in the district court pursuant to

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1 the provisions of Section 39-3-1.1 NMSA 1978. The court in its
2 discretion and upon proper showing may order a temporary
3 extension of the license pending disposition of the review
4 proceedings.

5 L. In connection with the determination of fitness
6 and character of an applicant pursuant to the provisions of
7 this section, the fact that the applicant or licensee is a
8 member of or interested financially in, connected or affiliated
9 with, controls or is controlled by or owns or is owned by other
10 corporations, partnerships, trusts, associations or other legal
11 entities engaged in the lending of money whose policies and
12 practices as to rates of interest, charges and fees and general
13 dealing with borrowers are questionable or would constitute
14 violation of the general usury statutes of this state or of the
15 Title Loan Act shall be given consideration and weight as the
16 director determines.

17 M. At the time of issuance of an original license
18 and each annual license renewal, the licensee for each licensed
19 office shall pay to the director a license fee for the period
20 covered by the license.

21 N. The director shall determine fees for licensure
22 that shall be at least five hundred dollars (\$500), but not
23 more than one thousand dollars (\$1,000), plus an additional
24 seventy-five cents (\$.75) for each one thousand dollars
25 (\$1,000) or fraction thereof of loans outstanding as of

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1 December 31 next preceding, as shown on the applicant's annual
2 report. In the event that the application for annual renewal
3 of the license is delinquent, the licensee shall also pay a
4 delinquency fee as determined by the director of at least ten
5 dollars (\$10.00) per day for each day the licensee is
6 delinquent in filing the application for renewal.

7 O. The director shall establish fees for
8 examination of a title lender, which shall not exceed one
9 hundred fifty dollars (\$150) per day, or fraction of a day of
10 examination.

11 P. A licensee, by accepting a license that is
12 issued or renewed or by continuing to operate a licensed office
13 under the Title Loan Act, shall by such action be deemed to
14 have consented to be bound by the lawful provisions of that act
15 and all lawful requirements, regulations and orders of the
16 director promulgated or issued pursuant to any authorization
17 granted in that act.

18 Section 6. [NEW MATERIAL] REQUIREMENTS FOR TITLE LOAN
19 PRODUCTS.--

20 A. A title lender may make title loan products
21 subject to the provisions of this section.

22 B. A title loan product shall be reduced to
23 writing, which shall include the following requirements:

24 (1) the title lender agrees to make a loan of
25 money to the consumer, and the consumer agrees to give the

1 title lender a security interest in a motor vehicle owned by
2 the consumer;

3 (2) the consumer consents to the title lender
4 keeping possession of the certificate of title and perfecting
5 the title lender's lien on the motor vehicle;

6 (3) the consumer has the exclusive right to
7 redeem the certificate of title by repaying all obligations
8 under the title loan product in full;

9 (4) upon completion by the consumer of all
10 obligations under a title loan product, the title lender shall
11 promptly release its security interest in the motor vehicle and
12 return the certificate of title to the consumer;

13 (5) the consumer has the right to rescind a
14 title loan product transaction by returning in cash, or through
15 certified funds, one hundred percent of the amount advanced by
16 a title lender no later than 5:00 p.m. on the next day of
17 business conducted by the title lender following the execution
18 of the title loan product agreement. If a consumer exercises
19 the right of rescission pursuant to this paragraph, no interest
20 charge or fee for the rescinded transaction shall be charged to
21 the consumer, except that if a title lender has incurred a fee
22 to perfect a security interest in the motor vehicle, that fee
23 may be charged to the consumer. A title lender shall not
24 charge or impose on the consumer a fee for exercising the right
25 of rescission. If this paragraph is applicable, any interest

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1 or fee collected by a title lender shall be returned in full to
2 the consumer;

3 (6) a title loan shall be structured as a
4 single payment transaction with a one-month term, but a title
5 loan may be automatically extended for up to six additional
6 months by the title lender at the same interest rate provided
7 in the original title loan. The title lender shall disclose to
8 the consumer an optional payment amount designated as the
9 monthly payment option. The monthly payment option shall be a
10 dollar amount that, if paid at the maturity of the original
11 title loan and at the maturity of each extension period, would
12 pay the title loan in full by the conclusion of the sixth
13 renewal period; and

14 (7) any assignee shall be obligated to the
15 terms of the title loan product agreement and all of its rights
16 and obligations.

17 C. The amount of a title loan shall not exceed
18 fifty percent of the fair market value of the motor vehicle. A
19 title lender shall not make a title loan to a consumer in which
20 the monthly payment for the title loan disclosed pursuant to
21 Paragraph (6) of Subsection B of this section exceeds twenty-
22 five percent of the consumer's gross monthly income.

23 D. A consumer may make payments in any amount on a
24 title loan product at any time before maturity without
25 additional fees.

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1 E. After each payment is made, in full or in part,
2 on a title loan product, the title lender shall give to the
3 person making the payment a signed, dated receipt showing the
4 amount paid, the amount credited toward principal, interest and
5 fees and the balance due.

6 F. The director shall determine which languages in
7 addition to English and Spanish, if any, that title loan
8 product agreements and title loan disclosures shall be
9 translated into and made available to consumers. Prior to the
10 consummation of a title loan, the title lender shall provide to
11 the consumer a copy of the title loan agreement and the title
12 loan disclosure in the available language selected by the
13 consumer.

14 G. The disclosure of the credit terms of a title
15 loan product agreement shall be according to and governed by
16 the requirements of 12 C.F.R. 226, known as "Regulation Z" of
17 the federal Truth in Lending Act. The definitions and
18 requirements of that regulation and commentary shall apply to
19 title loan products as if those provisions are fully set out in
20 this section.

21 Section 7. [NEW MATERIAL] TITLE LOAN PRODUCTS--TERMS--
22 RENEWALS--CHARGES.--

23 A. A title loan shall have a term of one month.

24 B. If there is an unpaid balance remaining at the
25 maturity of a title loan or an extended title loan, the title

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1 lender may, at the title lender's sole option, extend the title
2 loan or extended title loan for a one-month term. An original
3 title loan may be extended for up to six additional one-month
4 extension periods. If the original title loan agreement
5 provides that the title loan may be automatically extended, no
6 further consent of the consumer is required for an automatic
7 extension of the title loan.

8 C. After default and repossession of the motor
9 vehicle securing a title loan product, the title lender may
10 charge a consumer actual and reasonable expenses incurred in
11 taking possession of the motor vehicle, preparing the motor
12 vehicle for sale and selling the motor vehicle. Reasonable
13 expenses shall not exceed five hundred dollars (\$500).

14 Section 8. [NEW MATERIAL] PAYMENT PLANS--NOTICE--TERMS.--

15 A. Interest shall cease accruing on a title loan at
16 the conclusion of the final extended payment term.

17 B. If the consumer has not filed for bankruptcy
18 protection after entering into the title loan, at least fifteen
19 days prior to the maturity of the consumer's final extended
20 title loan or at least fifteen days prior to repossession of
21 the motor vehicle, the title lender shall mail the consumer a
22 notice of opportunity to enter into a payment plan. The
23 written notice shall:

24 (1) state the date by which the consumer must
25 act to enter into a payment plan;

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1 (2) state the remaining balance owed,
2 including principal, interest and fees;

3 (3) inform the consumer that the consumer may
4 pay the balance owed without further interest charge over a
5 period of at least three months and provide an estimated
6 monthly payment amount; and

7 (4) be in English; provided that if the
8 consumer elected to receive documents in another language
9 pursuant to Section 6 of the Title Loan Act at the time the
10 consumer entered into the title loan agreement, a copy of the
11 notice shall also be provided to the consumer in that language.

12 C. A payment plan shall provide for a term of at
13 least three months, shall consist of substantially equal
14 monthly payments, shall not require a first payment earlier
15 than fifteen days after the date of the written notice served
16 pursuant to Subsection B of this section and shall not include
17 any additional interest, fees or charges. Failure to make a
18 payment under a payment plan constitutes a default.

19 D. Failure of a consumer to pay the consumer's
20 obligations under a title loan or an extended title loan shall
21 not constitute a default until the later of fifteen days after
22 service of a notice of opportunity to enter a payment plan or
23 the date specified in the notice of opportunity to enter a
24 payment plan pursuant to Paragraph (1) of Subsection B of this
25 section.

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1 Section 9. [NEW MATERIAL] DEFAULT--REPOSSESSION AND SALE
2 OF MOTOR VEHICLE.--

3 A. A title lender shall collect on a title loan in
4 default in a professional, fair and lawful manner.

5 B. Upon default of a title loan product, a consumer
6 shall deliver the motor vehicle to the title lender at the
7 location specified by the title loan product agreement.

8 C. If a consumer fails to deliver the motor vehicle
9 to the title lender upon default, the title lender shall serve
10 the consumer a notice of default at the consumer's last known
11 address of record.

12 D. A title lender may take possession of the motor
13 vehicle ten business days after service of a notice of default.
14 A notice of opportunity to enter into a payment plan does not
15 constitute a notice of default.

16 E. Prior to authorizing repossession of the motor
17 vehicle, the title lender shall afford the consumer an
18 opportunity by mail and telephone to make the motor vehicle
19 available to the title lender at a place, date and time
20 reasonably convenient to the title lender and the consumer.

21 F. Upon taking possession of the motor vehicle, the
22 title lender shall provide notice to the consumer of the
23 lender's intent to dispose of the motor vehicle and shall
24 dispose of the motor vehicle in a commercially reasonable
25 manner. The notice and sale shall be in conformance with

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1 Chapter 55, Article 9 NMSA 1978. At any time prior to the
2 sale, the title lender shall permit the consumer to redeem the
3 motor vehicle by tendering cash, a money order or certified
4 check for the amount outstanding. Nothing in the Title Loan
5 Act precludes a consumer from purchasing the motor vehicle at a
6 sale.

7 G. Within thirty days after the sale of the motor
8 vehicle, the title lender shall deliver to the consumer all
9 proceeds from the sale of the motor vehicle less unpaid
10 principal, interest and fees owed under a title loan product
11 and the actual and reasonable expenses incurred by the title
12 lender in taking possession of, preparing for sale and selling
13 the motor vehicle, as provided in Section 7 of the Title Loan
14 Act; provided that the lender shall not use more than two
15 months' post default interest in this calculation.

16 H. After repossession, a title lender shall make
17 all personal contents from the motor vehicle available to the
18 consumer for a period of at least thirty days.

19 I. A title lender shall comply with Chapter 55,
20 Article 9 NMSA 1978.

21 J. In taking possession of and selling the motor
22 vehicle, the title lender shall at all times proceed in a
23 commercially reasonable manner.

24 K. Except as provided in Subsection L of this
25 section, a consumer who does not redeem a certificate of title

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1 is not personally liable to the title lender for any amount
2 owed under the title loan product, and the title lender shall
3 look solely to the motor vehicle for satisfaction of any amount
4 owed under the title loan product agreement.

5 L. A consumer who obtains a title loan product from
6 a title lender under false pretenses by hiding or not
7 disclosing the existence of a known valid prior lien or
8 security interest affecting the motor vehicle, who acts in any
9 other fraudulent manner with regard to the motor vehicle or who
10 intentionally diminishes its value is personally liable to the
11 title lender for the full amount owed pursuant to the title
12 loan product agreement, including expenses incurred by the
13 title lender in connection with the loan.

14 M. A prevailing consumer is entitled to reasonable
15 attorney fees and costs incurred in an action against a title
16 lender.

17 Section 10. [NEW MATERIAL] TITLE LOAN PRODUCTS--
18 PROHIBITED ACTS.--A title lender shall not:

19 A. enter into a title loan product agreement with a
20 person under the age of eighteen years;

21 B. threaten or intimidate a consumer or threaten to
22 use or request the use of criminal process in this or another
23 state to collect on a title loan product;

24 C. use a device or agreement that would have the
25 effect of avoiding the provisions of the Title Loan Act by

1 entering into a different type of transaction with the consumer
2 such as a sale-leaseback or other subterfuge that has that
3 effect;

4 D. sell or otherwise charge for any type of
5 insurance in connection with a title loan product agreement;

6 E. charge a prepayment penalty;

7 F. charge a fee to cash a check representing the
8 proceeds of a title loan;

9 G. charge a late fee or delinquency charge if a
10 consumer fails to repay a title loan product on time;

11 H. fail to exercise reasonable care in the
12 safekeeping of a certificate of title;

13 I. refuse to accept partial payments toward
14 satisfying an obligation owed under a title loan product
15 agreement;

16 J. accept a personal check or automated clearing
17 house payment from a consumer as payment toward a title loan
18 product balance;

19 K. accept collateral for a title loan product other
20 than the motor vehicle that is the subject of the title
21 provided as the initial collateral for that title loan or
22 require a consumer to provide a guaranty from another person
23 for a title loan product;

24 L. accept a certificate of title to a mobile home,
25 motor home or recreational vehicle as collateral for a title

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1 loan product;

2 M. include any of the following provisions in a
3 title loan product agreement:

- 4 (1) a hold harmless clause;
- 5 (2) a confession of judgment clause or power
6 of attorney;
- 7 (3) an assignment of or order for payment of
8 wages or other compensation for services;
- 9 (4) a waiver of claims for punitive damages;
- 10 (5) a provision in which the consumer agrees
11 not to assert a claim or defense arising out of the title loan
12 product agreement;
- 13 (6) a waiver of a provision of the Title Loan
14 Act;
- 15 (7) a waiver of the right to enter into a
16 payment plan;
- 17 (8) a waiver of any right secured by New
18 Mexico law;
- 19 (9) a mandatory arbitration clause;
- 20 (10) a provision allowing the title lender to
21 charge the consumer attorney fees for collection efforts; or
- 22 (11) a provision allowing the title lender to
23 charge the consumer post-default interest, except as allowed by
24 the Title Loan Act;

25 N. refuse to return:

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1 (1) the certificate of title as required by
2 the Title Loan Act;

3 (2) surplus proceeds from the sale of the
4 motor vehicle securing a title loan product; or

5 (3) personal property left in the motor
6 vehicle at the time of repossession within thirty days after
7 repossession;

8 O. make a title loan product contingent on the
9 purchase of car club membership, insurance or other goods or
10 services from the title lender, but nothing in this section
11 shall require a title lender to enter into a title loan product
12 secured by an uninsured motor vehicle;

13 P. offer, arrange, act as an agent for or assist a
14 third party in any way in the making of a title loan product
15 unless the third party complies with all applicable federal and
16 state laws and regulations;

17 Q. knowingly enter into a title loan product
18 agreement with a consumer who lacks the capacity to consent;

19 R. own or operate a vehicle sales facility or
20 pawnshop;

21 S. use an agency agreement or partnership agreement
22 as a scheme or contrivance to circumvent the application of the
23 provisions of the Title Loan Act to a title loan. For the
24 purposes of this subsection:

25 (1) "agency agreement" means an agreement

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1 between in-state entities and a banking corporation, savings
2 and loan association or credit union operating under the laws
3 of the United States or of any state whereby the in-state agent
4 holds a predominant economic interest in the revenues generated
5 by a title loan product made to New Mexico residents; and

6 (2) "partnership agreement" means an agreement
7 between in-state entities and a banking corporation, savings
8 and loan association or credit union operating under the laws
9 of the United States or of any state whereby the in-state
10 partner holds a predominant economic interest in the revenues
11 generated by a title loan product made to New Mexico residents;

12 T. advertise using the words "interest-free loans"
13 or "no finance charge";

14 U. make any type of loan other than a title loan
15 product from the premises of a title lender's office;

16 V. charge interest that is based on any calculation
17 other than simple interest; or

18 W. provide marketing materials to a consumer who is
19 a party to a title loan product with the title lender.

20 Section 11. [NEW MATERIAL] REQUIRED DISCLOSURES.--A title
21 lender shall provide a notice immediately above the consumer's
22 signature on each title loan agreement in at least twelve-point
23 bold type using the following language:

24 "(1) A title loan is not intended to meet long-term
25 financial needs.

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1 (2) You should use a title loan only to meet short-
2 term cash needs.

3 (3) If you default on this title loan, you may lose
4 your vehicle.

5 (4) A title loan is a high-cost loan. You should
6 consider what other lower-cost loans are available to you."

7 Section 12. [NEW MATERIAL] DUTIES OF DIVISION.--

8 A. The division shall:

9 (1) maintain a list of title lenders that is
10 available to the general public; and

11 (2) establish a complaint process whereby an
12 aggrieved consumer or other person may file a complaint against
13 a title lender or an unlicensed person that violates a
14 provision of the Title Loan Act.

15 B. The division may:

16 (1) hold hearings, make findings of fact or
17 conclusions of law;

18 (2) issue cease and desist orders;

19 (3) refer the matter to the appropriate law
20 enforcement agency for prosecuting a violation; or

21 (4) seek injunctive or other relief in
22 district court or revoke or suspend a license granted under the
23 Title Loan Act.

24 C. The division shall compile a report for the
25 legislature on October 1 each year beginning in 2011 detailing

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1 title loan product statistics, including data adequate to
2 obtain an accurate understanding of the practices and legal
3 compliance of all title lenders in the state. Annual reports
4 shall be made available to interested parties and the general
5 public. Consistent with state law and available information,
6 the report shall include, at a minimum, nonidentifying consumer
7 data from the calendar year ending December 31 of the previous
8 year, including:

- 9 (1) the total number and dollar amount of
10 title loans and payment plans entered into by consumers;
- 11 (2) the total number and dollar amount of
12 title loans and payment plans outstanding;
- 13 (3) the average number of days of a title
14 loan, including statistics detailing the percentage of
15 consumers who elect to enter into a payment plan;
- 16 (4) the number of title loans and payment
17 plans in default, the number of repossessions by title lenders
18 for default and the average amount of the loans in default or
19 loans satisfied by repossession;
- 20 (5) the total dollar amount of the net write-
21 offs and the net recoveries of a title lender;
- 22 (6) the minimum, maximum and average dollar
23 amounts of title loans and payment plans entered into by
24 consumers;
- 25 (7) the average number of transactions and

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1 average aggregate title loan amount entered into per consumer
 2 each year;

3 (8) the number of consumers in default who
 4 deliver the motor vehicle to the title lender;

5 (9) the number of consumers in default who
 6 redeem the motor vehicle after it has been repossessed but
 7 before the sale of the motor vehicle; and

8 (10) the average amount of time for a title
 9 lender to return the certificate of title to a consumer who has
 10 paid the loan in full.

11 Section 13. [NEW MATERIAL] TITLE LENDER REPORTING--
 12 VERIFICATION.--

13 A. Before entering into a title loan agreement with
 14 a consumer, a title lender shall verify that the proposed
 15 agreement is permissible under the provisions of the Title Loan
 16 Act.

17 B. A title lender shall report to the division on a
 18 semiannual basis all data described in Subsection C of Section
 19 12 of the Title Loan Act. The division shall compile the data
 20 submitted by all title lenders pursuant to Subsection C of
 21 Section 12 of the Title Loan Act. The division may audit title
 22 lenders for compliance with this section.

23 C. The provisions of Section 14-7-1 NMSA 1978 shall
 24 not apply to access by the division to information for purposes
 25 of compliance monitoring or preparation of reports pursuant to

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underscored material = new
 [bracketed material] = delete

1 this section.

2 Section 14. [NEW MATERIAL] VIOLATION OF ACT CONSTITUTES
3 AN UNFAIR TRADE PRACTICE.--A material violation of the Title
4 Loan Act constitutes an unfair or deceptive trade practice
5 pursuant to the Unfair Practices Act.

6 Section 15. [NEW MATERIAL] TITLE LOAN ACT ADMINISTRATION
7 FUND CREATED--PURPOSE.--The "Title Loan Act administration
8 fund" is created as a nonreverting fund in the state treasury.
9 The fund consists of fees collected pursuant to the Title Loan
10 Act, money that is appropriated or donated or that otherwise
11 accrues to the fund and income from investment of the fund.
12 The division shall administer the fund, and money in the fund
13 is appropriated to the division to enforce the Title Loan Act.
14 Money in the fund shall be disbursed on warrants signed by the
15 secretary of finance and administration pursuant to vouchers
16 signed by the director or the director's authorized
17 representative. Any unexpended or unencumbered balance
18 remaining at the end of a fiscal year shall not revert to the
19 general fund.

20 Section 16. Section 58-15-3 NMSA 1978 (being Laws 1955,
21 Chapter 128, Section 3, as amended) is amended to read:

22 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
23 PENALTY.--

24 A. A person shall not engage in the business of
25 lending in amounts of two thousand five hundred dollars

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1 (\$2,500) or less for a loan without first having obtained a
2 license from the director. Nothing contained in this
3 subsection shall restrict or prohibit a licensee under the New
4 Mexico Small Loan Act of 1955 from making loans in any amount
5 under the New Mexico Bank Installment Loan Act of 1959 in
6 accordance with the provisions of Section 58-7-2 NMSA 1978.

7 B. Nothing in the New Mexico Small Loan Act of 1955
8 shall apply to a person making individual advances of two
9 thousand five hundred dollars (\$2,500) or less under a written
10 agreement providing for a total loan or line of credit in
11 excess of two thousand five hundred dollars (\$2,500), or to a
12 person making a title loan pursuant to the Title Loan Act.

13 C. A banking corporation, savings and loan
14 association or credit union operating under the laws of the
15 United States or of a state shall be exempt from the licensing
16 requirements of the New Mexico Small Loan Act of 1955, nor
17 shall that act apply to business transacted by any person under
18 the authority of and as permitted by any such law nor to any
19 bona fide pawnbroking business transacted under a pawnbroker's
20 license nor to bona fide commercial loans made to dealers upon
21 personal property held for resale. Nothing contained in the
22 New Mexico Small Loan Act of 1955 shall be construed as
23 abridging the rights of any of those exempted from the
24 operations of that act from contracting for or receiving
25 interest or charges not in violation of an existing applicable

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1 statute of this state.

2 D. The provisions of Subsection A of this section
3 apply to:

4 (1) a person who owns an interest, legal or
5 equitable, in the business or profits of a licensee and whose
6 name does not specifically appear on the face of the license,
7 except a stockholder in a corporate licensee; and

8 (2) a person who seeks to evade its
9 application by any device, subterfuge or pretense whatsoever,
10 including but not thereby limiting the generality of the
11 foregoing:

12 (a) the loan, forbearance, use or sale
13 of credit (as guarantor, surety, endorser, comaker or
14 otherwise), money, goods or things in action;

15 (b) the use of collateral or related
16 sales or purchases of goods or services or agreements to sell
17 or purchase, whether real or pretended;

18 (c) receiving or charging compensation
19 for goods or services, whether or not sold, delivered or
20 provided; and

21 (d) the real or pretended negotiation,
22 arrangement or procurement of a loan through any use or
23 activity of a third person, whether real or fictitious.

24 E. A person, copartnership, trust or a trustee or
25 beneficiary thereof or an association or corporation or a

1 member, officer, director, agent or employee thereof who
 2 violates or participates in the violation of a provision of
 3 Subsection A of this section is guilty of a petty misdemeanor
 4 and upon conviction shall be sentenced pursuant to the
 5 provisions of Subsection B of Section 31-19-1 NMSA 1978. A
 6 contract or loan in the making or collection of which an act is
 7 done that violates Subsection A or D of this section is void
 8 and the lender has no right to collect, receive or retain any
 9 principal, interest or charges whatsoever."

10 Section 17. SEVERABILITY.--If any part or application of
 11 this act is held invalid, the remainder or its application to
 12 other situations or persons shall not be affected.

13 Section 18. EFFECTIVE DATE.--The effective date of the
 14 provisions of this act is November 1, 2009.

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